REMARKS

Objections to specification

The specification has been objected to because "the memory 308" on page 9, line 1, is correctly "the memory 304." Applicant has corrected this error, and requests the withdrawal of this objection.

Claim rejections under 35 USC 101

Claims 18-20 have been rejected under 35 USC 101 as being directed to non-statutory subject matter. In particular, the Examiner is concerned that the computer-readable medium can include a non-tangible modulated carrier signal as well as a tangible recordable data storage medium. In response, Applicant has amended claim 18 to limit the computer-readable medium to a tangible computer-readable medium, and has amended claim 20 so that this medium cannot be a modulated carrier signal. As such, Applicant requests the withdrawal of this rejection.

Claim rejections under 35 USC 112

Claims 1, 2, 12, 18, and 19 have been rejected under 35 USC 112, second paragraph, as being indefinite. In particular, the Examiner is concerned that these claims recite utilizing a particular approach to executing a code section without laying out the steps and/or acts involved in utilizing such an approach. Applicant has amended these claims to render them more clear. In particular, the utilization of a particular approach is the step and/or act that is employed or used to execute a code section. To make this more clear, for instance, Applicant has amended the method limitations so that they recite executing a code section using a particular approach (e.g., a hardware approach or a software approach).

Thus, the claims are definite. That is, a code section is positively recited as being executed. As to "how" the section is executed, it is executed using a hardware approach and/or a

software approach. No further recitation is required for one of ordinary skill within the art to understand the metes and bounds of the claims, since executing a code section using a hardware approach to transactional memory is clear and discernable to one of ordinary skill within the art, and executing the code section using a software approach is likewise clear and discernable to one of ordinary skill within the art.

If the Examiner still believes that the claims are indefinite, however, he is requested to contact Applicant's representative, Mike Dryja, at the phone number listed below, with suggested claim language that would render the claims definite to the satisfaction of the Examiner.

Claim rejections under 35 USC 102 as to claims 1-6, 8, and 10

Claims 1-6, 8, and 10 have been rejected under 35 USC 102(e) as being anticipated by Tremblay (2004/0162967). Applicant notes that Tremblay has an effective date of August 8, 2003, insofar as it was filed on this date, and does not claim priority to any other patent application. In response to this rejection, therefore, Applicant submits herewith a Rule 131 declaration, of Paul McKenney, and an associated Exhibit A. Mr. McKenney is an inventor of the present patent application.

Applicant notes that a Rule 131 declaration, to swear behind a reference, can provide facts to establish reduction to practice of the invention prior to the effective date of the prior reference. (See, e.g., Cooper v. Goldfarb, 154 F.3d 1321, 47 USPQ2d 1896, 1901 (Fed. Cir. 1998)) In particular, paragraphs 3 and 4, and the portions of Exhibit A that these paragraphs reference, provide evidence of reduction to practice of the invention no later than January 30, 2003, which pre-dates the effective date of August 8, 2003, of Tremblay.

Applicant further notes that a Rule 131 declaration has to "establish possession of either the whole invention claimed or something falling within the claim . . . in the sense that the claim as a whole reads on it." (MPEP sec. 715.02) However, a Rule 131 declaration "is not insufficient merely because it does not show the identical disclosure of the reference(s) or the identical subject

matter in the activity relied upon." (Id.) Applicant respectfully submits that the description of the claimed invention in Exhibit A is consistent with that which is claimed insofar as necessary for Rule 131 to apply.

Therefore, Applicant respectfully asserts that Tremblay is not properly relied upon as a prior art reference, due to the filing of the Rule 131 declaration and associated Exhibit A herewith. As such, claims 1-6, 8, and 10 are patentable.

Claim rejections under 35 USC 102 as to claims 18-19

Claims 18 and 19 have been rejected under 35 USC 102(e) as being anticipated by Scott (6,965,961). Claim 18 is an independent claim, from which claim 19 ultimately depends. Applicant submits that claim 18 is patentable over Scott, such that claim 19 is as well.

Claim 18 is limited to means for "executing a code section *using a software approach to locking memory where a hardware approach to transactional memory has failed a threshold in executing the code section*." In other words, if the hardware approach to transactional memory has failed a threshold in executing a code section, the code section is still executed, using a software approach to locking memory. Applicant submits that Scott does not teach, suggest, or disclose this limitation.

The Examiner has recited claim 12 of Scott as teaching, disclosing, or suggesting this limitation of the claimed invention. However, claim 12 merely discusses using a software lock, which is a software approach to locking memory, and does not disclose usage of a hardware approach to transaction memory, in contradistinction to the claimed invention. Furthermore, claim 12 merely discusses what happens when the *software approach* has failed (e.g., see step c in claim 12 – the node corresponding to the timed-out thread that failed to acquire the lock is removed), whereas the claimed invention is limited to discussing what happens when the *hardware approach* has failed (i.e., the software approach is then executed). As such, Scott does not anticipate the claimed invention.

Claim rejections under 35 USC 103

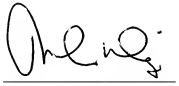
Claim 9 has been rejected under 35 USC 103 as being unpatentable over Tremblay in view of Rajwar (2003/0079094). Claims 7 and 11 have been rejected under 35 USC 103 as being unpatentable over Tremblay in view of McKenney (2002/0078284). Claims 12-17 have been rejected under 35 USC 103 as being unpatentable over Tremblay in view of Radovic (2004/0098723). Insofar as Tremblay is no longer prior art as to the present patent application due to the Rule 131 declaration that has been filed, as has been discussed above in relation to the 35 USC 102 rejection, claims 7, 9, 11, and 12-17 are patentable over Tremblay in view of any other reference.

Claim 20 has been rejected under 35 USC 103(a) as being unpatentable over Scott in view of common knowledge. Claim 20 is a dependent claim depending from independent claim 18. Therefore, insofar as claim 18 is patentable, as has been discussed above, claim 20 is patentable as well.

Conclusion

Applicants have made a diligent effort to place the pending claims in condition for allowance, and request that they so be allowed. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Mike Dryja, Applicants' Attorney, at 425-427-5094, so that such issues may be resolved as expeditiously as possible. For these reasons, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,



January 2, 2007
Date

Michael A. Dryja, Reg. No. 39,662
Attorney/Agent for Applicant(s)

Law Offices of Michael Dryja
704 228th Ave NE #694
Sammamish, WA 98074
tel: 425-427-5094
fax: 206-374-2819